IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9186 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIWAKAR DEVDUTT SHARMA

Versus

POLICE COMMISSIONER

Appearance:

MR DJ CHAUHAN for Petitioner

MR UR BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 12/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Rajkot City on 04th August, 2000 in exercise of powers conferred upon

him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained on 04th August, 2000.

1. The offence is registered against the petitioner before Rajkot Taluka Police Station on 2nd of July, 2000 under Sections 66(B), 6 (A) & (E) and 116 (B) and 81 of the Bombay Prohibition Act and the detaining authority has taken the investigation of this case into consideration whereby the detaining authority came to the conclusion that the petitioner was indulging in selling of illegal liquor and therefore the petitioner was a "bootlegger" within the meaning of Sec. 2(b) of the PASA Act. After considering other remedies available, the detaining authority came to the conclusion that to prevent the illegal and anti social activities of the petitioner, there is no other alternative except to pass the order under the PASA Act for the detention of the petitioner.

3. Learned Advocate Mr.D.J.Chauhan for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. Amongst various grounds it was vehemently urged that the order in question is vitiated by delay in passing the order by the detaining authority. It was urged that the detenu petitioner was on bail in the offence registered against him on 2nd July, 2000 and order came to be passed only on 4th of August, 2000.

5. Having considered the above mentioned contention on behalf of the petitioner, it is clear that the detaining authority has placed reliance upon the investigation made in the crime registered against the petitioner on 2nd July, 2000. The order came to be passed on 4th August, 2000, nearly after one month of registration of the crime against the petitioner. During this period the provision of cancellation of bail has not been resorted to.

6. In the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381, this Court after relying upon the ratio laid down by the Apex Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in 1993 (2) Suppl. SCC 61, observed that there must be a live link between the alleged offence or alleged illegal activity of the detenu and passing of the orders. In the present case also, the

order came to be passed only after one month and it could be said that the detaining authority has taken into consideration the stale instance, on which the order of detention came to be passed and, therefore, the order passed by the detaining authority is vitiated and is required to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Rajkot City on 4th August, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Diwakar Devdutt Sharma is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair